

CV of Alexander Potts QC

Alex Potts QC - Professional CV

Alex Potts QC is a partner and director with Kennedys Chudleigh Ltd. in Bermuda.

He is admitted as a barrister and an attorney in Bermuda and in England and Wales, and he was appointed as a Queen's Counsel of England and Wales in 2018. Alex was also admitted to the Cayman Islands Bar in 2005.

With a particular focus on complex disputes, Alex handles matters in the fields of banking, financial services, investment funds, (re)insurance, professional negligence, company law, trusts and contentious insolvency; his practice also extends to matters of public, constitutional and administrative, regulatory, telecommunications, employment, planning, and environmental law.

Alex has conducted cases and appeared as leading counsel before a variety of first-instance and appellate courts, arbitration tribunals, and regulatory tribunals, in England and Wales, Bermuda and the Cayman Islands. He is frequently instructed as counsel in 'Bermuda Form' international insurance arbitrations, and associated legal proceedings.

Alex has also provided expert evidence on Bermuda law and English law for use in foreign legal proceedings.

Alex Potts QC's reported cases as Counsel include:

- *In the matter of A Trust* [2018] SC (Bda) 53 Civ (Costs of contested application by Trustees for Court approval of a momentous decision)
- *Athene Holding Ltd v Caldera Holdings Limited et al* [2018] SC (Bda) 52 Civ (Application to stay proceedings on *forum non conveniens* and case management grounds; alleged breaches of duties of confidentiality and restrictive covenants in context of insurance company takeover bid)
- *In the matter of the A Trusts* [2018] SC (Bda) 42 Civ (Trustees' application for Court approval of a momentous decision to effect a corporate transaction, contested by beneficiaries)
- *One Communications Ltd et al v Regulatory Authority of Bermuda* [2018] SC (Bda) 18 Com (Costs of judicial review proceedings where both parties achieve partial success)
- *S v T* [2018] SC (Bda) 9 Civ (Court appointment of third arbitrator)
- *BEST v Minister of Home Affairs et al* [2017] SC (Bda) 112 App (Planning appeal on environmental grounds in the public interest; material considerations in planning permission applications; conservation of agricultural land)
- *Bermuda Telephone Company Ltd v Regulatory Authority of Bermuda* [2017] SC (Bda) 109 Civ (Judicial review of enforcement notice; regulation of telecommunications service providers under the Regulatory Authority Act 2011)
- *One Communications Ltd et al v Regulatory Authority of Bermuda* [2017] SC (Bda) 97 Civ (Judicial review of Market Review of telecommunications sector; and enforceability of *ex ante* remedies against entities with Significant Market Power under the Regulatory Authority Act 2011 and the Electronic Communications Act 2011)
- *Chubb Bermuda v Ford Motor Co* [2017] SC (Bda) 88 Civ (Injunction to restrain misuse of privileged and confidential taxation information; implied undertaking; waiver)
- *Corporation of Hamilton v Attorney General & Centre for Justice* [2017] Bda LR 30 (Powers of statutory corporation; invalidity of statutory instruments; parking regulations)
- *In the matter of Opus Offshore* [2017] SC (Bda) 14 Com (application to appoint provisional liquidators, competing nominations and competing winding up petitions)
- *Allied World Assurance Company Ltd & Ironshore Insurance Co Ltd v MF Global Assigned Assets LLC & MF Global Holdings Ltd* [2017] SC Bda 7 Com (application for leave to discontinue proceedings, governing principles, Order 21 rule (3) of the Rules of the Supreme Court 1985, compliance with US Bankruptcy Court Order requiring that Bermuda proceedings be "dismissed" on a without prejudice basis)

- *Allied World Assurance Company Ltd & Ironshore Insurance Co Ltd v MF Global Assigned Assets LLC & MF Global Holdings Ltd* [2017] SC Bda 6 Com (Enforcement of arbitration agreement governed by Bermudian procedural law, anti-suit injunction, mandatory interim anti-suit injunction, restraint of Adversary Proceeding before US Bankruptcy Court)
- *Jack et al v Minister of Public Works* [2016] SC (Bda) 108 Com (Summary judgment, admissions, application to remove counsel as a potential witness, overriding objective, duty to conduct litigation in a proportionate manner, Court's duty to ensure parties are on an equal footing)
- *Telecommunications Networks v Regulatory Authority of Bermuda* [2016] SC (Bda) 91 Civ (Appeal under section 96 of the Regulatory Authority Act 2011, application for interim stay pending appeal, application to strike-out appeal, application for 4G spectrum lots, Electronic Communications Act 2011, whether statutory scheme permits or requires positive discrimination to promote competition, waiver of right to object to procedural aspects of 'request for application' process)
- *CBM Agente de Valores v PPF Life Assets Fund* [2016] SC (Bda) 76 Com (closed-ended mutual fund; contributory's winding up petition on just and equitable grounds; loss of substratum; Mareva (freezing) injunction; post-petition dispositions and validation orders under section 166 of the Companies Act 1981)
- *Centre for Justice v Attorney General and Minister for Legal Affairs et al* [2016] SC (Bda) 64 Civ, [2016] SC (Bda) 72 Civ (judicial review; fundamental rights and freedoms under the Constitution and the Human Rights Act 1981; legality of Referendum (Same Sex Relationships) Act 2016 and Referendum Act 2012; undue influence; neutrality of polling stations)
- *Majuro Investment Corporation v Timis et al* [2016] SC (Bda) 22 Com (abuse of process; indemnity costs order; third party costs order; non-party costs order; order for disclosure of identities and addresses of litigation funders)
- *Kingate Global Fund Ltd et al v Kingate Management Ltd et al* [2016] Bda LR 4 (summary dismissal of a strike-out application involving serious and prolonged argument on controversial points of law in developing areas of jurisprudence)
- *ACE Bermuda Insurance Ltd v Ford Motor Company* [2016] Bda LR 1 (anti-suit injunction to enforce arbitration agreement; privacy and confidentiality of arbitration materials in the context of Court applications)
- *Bermuda Environmental Sustainability Taskforce v The Minister of Home Affairs* [2015] SC (Bda) 90 Com (Environmental Impact Assessments under Bermuda law and international law; land reclamation of the South Basin of Bermuda's Dockyard for America's Cup 2017 event village use; material considerations in planning permission applications; finality of planning decisions; planning permission in principle)
- *Majuro Investment Corporation v Timis et al* [2015] SC (Bda) 87 Civ (application to set aside service outside of the jurisdiction of Bermuda; RSC Order 11, rule 1(1)(c), anchor defendant, and 'necessary and proper party' test; derivative actions under Bermuda law; standing of parties that are not registered shareholders; effect of insolvency and appointment of UK Administrators; failure to give full and frank disclosure)
- *Bermuda Environmental Sustainability Taskforce v The Minister of Home Affairs* [2015] SC (Bda) 71 Com (second Protective Costs Order made by the Supreme Court of Bermuda in the context of a planning appeal brought on environmental and public interest grounds)
- *Kingate Global Fund Ltd et al v Kingate Management Ltd et al* [2015] SC (Bda) 65 Com (trial of preliminary issues; Funds' claims against investment manager for restitution of management fees in context of Madoff 'Ponzi' scheme; unjust enrichment; mistake; contractual entitlement; final and binding status of NAV determinations; fraud or manifest error)
- *Jack et al v The Minister of Public Works* [2015] SC (Bda) 62 Civ (private nuisance and public nuisance; application for interlocutory injunction restraining acts of nuisance and unlawful development of Bermuda's Botanical Gardens; relevance of the grant or expiry of planning permission to nuisance claims; indemnity costs and interim payment orders)
- *Patriot Group v Hilco* [2015] SC (Bda) 38 Com (legal costs of non-party witness contesting Examination Order; costs sanctions for ex parte applicant's failure to give full and frank disclosure)

- *Patriot Group v Hilco* [2015] SC (Bda) 32 Civ (Letter of Request gathering evidence for use in foreign proceedings; impermissibility of pre-trial discovery; obligations of full and frank disclosure in ex parte applications; conditions to be imposed on Examination Orders; recovery of legal costs and witness expenses)
- *The Corporation of Hamilton v The Attorney-General, The Minister of Home Affairs and The Ombudsman of Bermuda* [2015] SC (Bda) 22 Civ (summary dismissal of constitutional complaint under section 6(8) of the Bermuda Constitution; Ombudsman not a judicial or adjudicatory authority)
- *Bermuda Environmental Sustainability Taskforce v The Minister of Home Affairs* [2014] Sc (Bda) 73 App (Court awarded and summarily assessed costs in favour of successful Appellant; costs rules in public interest proceedings)
- *Bermuda Environmental Sustainability Taskforce v The Minister of Home Affairs* [2014] Sc (Bda) 61 App (Environmental Impact Assessments under Bermuda law and international law; legal validity and interpretation of Special Development Orders under Development and Planning Act 1974; breaches of natural justice by Development Applications Board and the Minister of Planning; material considerations in planning permission applications)
- *Bermuda Environmental Sustainability Taskforce v The Minister of Home Affairs* [2014] Sc (Bda) 56 Com (first Protective Costs Order made by the Supreme Court of Bermuda in the context of a planning appeal brought on environmental and public interest grounds)
- *In the matter of the Estate of Mrs. Ericka Schirmer* [2014] SC Bda 466 (Life Insurance Act 1978; Court held that insurance monies were payable to designated beneficiaries free from claims of creditors and heirs)
- *The Corporation of Hamilton v The Ombudsman for Bermuda* [2014] SC (Bda) 1 Civ (Court dismissed an application for leave to apply for judicial review of the Ombudsman's decision to investigate the affairs of the Corporation of Hamilton; costs in judicial review proceedings; injunctive relief in judicial review proceedings)
- *In the matter of A Trust* [2013] SC (Bda) 21 Civ (Court awarded indemnity costs to trustee in hostile litigation against beneficiary)
- *In the matter of A Trust* [2012] SC (Bda) 72 Civ (Court granted anti-suit injunction to trustee of Bermuda law trust restraining beneficiary from asserting hostile claims in foreign Court)
- *In the matter of Kingate Management Limited* [2012] Bda LR 63 (Court lifted automatic stay of proceedings against company in liquidation under section 167(4) of the Companies Act 1981; joinder of parties; disclosure of insurance policy documents under the Third Parties (Rights Against Insurers) Act 1963)
- *In the matter of Kingate Management Limited* [2012] Bda LR 14 (Court ordered compulsory winding up of hedge fund management company of its own motion; inherent jurisdiction; standing of provisional liquidators to appear at winding up petition hearing)
- *Oil Basins Ltd v Conticommerce SA & Fondation Anora* [2012] Bda LR 7 (Interpleader procedure under RSC Order 17; scope of Court's jurisdiction to vary interim Orders)
- *Grayken v Grayken* [2011] Bda LR 15 (Amendments of pleadings after expiry of limitation period; allegations of fraud disallowed by Court of Appeal)
- *Saad Investments Company Limited (in Caymanian Liquidation) v Green Way Special Opportunities Fund Limited & Credit Agricole (Suisse) SA* [2010] Bda LR 83 (Exclusive jurisdiction clauses post-insolvency; service out of the jurisdiction; injunctive relief; recognition and assistance to foreign liquidators at common law)
- *Phoenix Global and Phoenix Capital v Citigroup & Bank of Bermuda* [2009] Bda LR 70 (Indemnity costs; contractual rights of indemnity; effect of findings of dishonesty)
- *Phoenix Global and Phoenix Capital v Citigroup & Bank of Bermuda* [2009] Bda LR 68 (Court dismissed claims by two insolvent hedge funds against fund administrators and custodians; duties of fund service providers; duties of fund directors and fund managers; use of expert evidence; attribution; loss of a chance; ex turpi causa; contributory negligence; mitigation; Bye-law indemnities and exculpation clauses; ratification; sections 98B and 281 of the Companies Act 1981)

- *In the matter of Stewardship Credit Arbitrage Fund Ltd* [2008] Bda LR 67 (Court appointed provisional liquidators over hedge fund (Petters feeder fund); rights of redeemed investor and status as creditor; inability of fund to restate NAV in the event of mistake; winding up on insolvency and just and equitable grounds)
- *Phoenix Global and Phoenix Capital v Citigroup & Bank of Bermuda* [2007] Bda LR 61 (Court ordered security for costs against insolvent hedge fund companies acting as nominal plaintiffs; third party funders; abuse of process; non-party costs orders; overriding objective and rights to a fair trial)
- *TG and RC v KX*, Grand Court of the Cayman Islands, Cause No: 499 of 2002, Levers J, 14 July 2005 (Court awarded substantial damages for personal injuries to law student injured in road traffic accident; including *Smith v Manchester* damages for handicap on open labour market)

Affiliations, Activities, Accomplishments

Alex Potts QC is a member of a number of professional organizations including: INSOL International, COMBAR (Honorary Member), and the Chancery Bar Association (Overseas Member).

He is a graduate of Oxford University, City University and the Inns of Court School of Law in London, and he is a member of the Middle Temple and the Chartered Institute of Arbitrators.

Alex is also an active member of the Legal Focus Group and the Trust Law Reform Sub-Committee of the Bermuda Business Development Agency, a committee member of the Restructuring and Insolvency Specialists Association of Bermuda, and an appointed member of Bermuda's Copyright Tribunal and Human Rights Commission.

For a number of years, Alex has been recognized by *The Legal 500*, *Chambers Global*, and *Who's Who Legal* as a leading Asset Recovery, Dispute Resolution, Insurance and Reinsurance, and Trusts lawyer in Bermuda.

Publication List

Alex Potts QC's publications include:

- 'The International Comparative Legal Guide to International Arbitration 2018', Bermuda chapter, ICLG, (2018).
- 'The International Comparative Legal Guide to Corporate Recovery and Insolvency 2018', Bermuda chapter, ICLG, (2018).
- 'Investment Funds in Bermuda: Winds of Change', IFC Caribbean Review 2018
- 'Post Petition Dispositions and Validation Orders in Bermuda law', International Corporate Rescue, Volume 13 (2016), Issue 6 (co-authored with Caitlin Conyers).
- Directors' Liability and Indemnification: A Global Guide (Globe Law and Business, 3rd edition, 2016), Bermuda chapter co-authored with Mark Chudleigh.
- 'A Review of Recent Legal Developments in Bermuda', The Journal of International Tax, Trust and Corporate Planning, Volume 23, Issue 2, pages 115 to 120 (2016).
- Sedgwick LLP's Offshore Professional Risks Newsletter (2016).
- 'What is Mediation, and Should It Be Made Compulsory for Civil and Commercial Disputes in Bermuda', Sedgwick White Paper (January 2016).
- Bermuda Restructuring & Insolvency 'Practice Notes', Lexis PSL (2015).
- 'TIEAs in the Courts of International Financial Centres', IFC Review 2015 (1 July 2015).
- 'The International Comparative Legal Guide to Corporate Recovery and Insolvency 2015', Bermuda chapter co-authored with Nick Miles, ICLG, 9th edition (2015).

- 'Getting the Deal Through - Anti-Corruption Regulation 2015', Bermuda chapter co-authored with Chen Foley (2015).
- 'Floods of TIEAs', Cayman Financial Review (31 October 2014).
- 'Bermuda: Taking Charge of the Future: a review of recent legislative changes relating to trusts and insurance contracts', Sedgwick White Paper (September 2014).
- 'Focus - Bermuda: What kind of disputes will keep us busy over the next few years?' South Square Digest (August 2014).
- 'The International Comparative Legal Guide to International Arbitration 2014', Bermuda chapter co-authored with Mark Chudleigh, ICLG, 11th edition (2014).
- 'The International Comparative Legal Guide to Corporate Recovery and Insolvency 2014', Bermuda chapter co-authored with Nick Miles, ICLG, 8th edition (2014).
- 'Recent developments in tax information exchange litigation in Bermuda and other international financial centres', The Journal of International Tax, Trust and Corporate Planning, Volume 21, Issue 1, pages 50 to 63 (2014).
- 'Getting the Deal Through - Anti-Corruption Regulation 2014', Bermuda chapter co-authored with Chen Foley.
- 'Bermuda: Quo Fata Ferunt: a review of regulatory developments in 2013', IFC Review (2014).
- 'Blood, Sweat & TIEAs: Tax Information Exchange Litigation in Bermuda', co-authored with Amy Murray, IFC Caribbean 2014 (2014).
- Sedgwick LLP's Offshore Professional Risks Newsletter (2013 and 2014).
- 'No Place Like Home (The Bermuda Court's approach to jurisdiction issues in trusts disputes)', STEP Journal (March 2014).
- 'Industry Loss Warranties: Let's Not Be Trigger Happy Yet', co-authored with Mark Chudleigh, Global Reinsurance (Winter 2013).
- 'Recognition of, and Assistance to, Foreign Insolvency Proceedings: a View from Bermuda', paper published for INSOL International Cayman Islands One Day Seminar (7 November 2013).
- 'Devil's Isle Detail: An Overview of the Laws Regulating Bermuda's Marine Environment', Sedgwick White Paper, co-authored with Mark Chudleigh and Amy Murray (November 2013).
- 'The International Comparative Legal Guide to Corporate Recovery and Insolvency 2013', Bermuda chapter co-authored with Mark Chudleigh, ICLG, 7th edition (2013).
- Bermuda Restructuring & Insolvency 'Practice Notes', Lexis PSL (2013)
- 'Why drink driving, speeding, and not wearing a seatbelt, are very bad ideas in Bermuda', The Royal Gazette (22 August 2013).
- 'Re A Trust [2013] SC (Bda) 16 Civ. Can a Court order disclosure of trust documents to a beneficiary even where the trust deed gives the trust protector an express right of veto? The Supreme Court of Bermuda says yes', co-authored with Amy Murray, Trusts & Trustees (31 July 2013).
- 'Corporate Hospitality Could be Scrutinized under Possible New Anti-Bribery Laws', co-authored with Chen Foley, The Royal Gazette (26 April 2013).
- 'Commercial Litigation in Bermuda', chapter co-authored with Narinder Hargun, in 'Offshore Commercial Law in Bermuda' (Wildy's, 2013) ed Ian Kawaley.
- 'Madoff: the litigation fallout continues', co-authored with Eleanor Heine, Insurance Day (27 September 2012).

- ‘Current Trends in Discovery Regulations: A Bermuda and Offshore Perspective’, chapter co-authored with Mark Chudleigh, ‘Inside the Minds: Complying with International Discovery Regulations’, Aspatore Books (September 2012).
- ‘The International Comparative Legal Guide to Corporate Recovery and Insolvency 2012’, Bermuda chapter co-authored with Nick Miles, ICLG, 6th edition (2012).
- ‘International Insolvency Co-operation in Bermuda’, paper co-authored with Robin Mayor for the American Bankruptcy Institute’s International Insolvency and Restructuring Symposium, Dublin (October 2011).
- ‘International Insolvency Co-operation in Bermuda: Arrested Development?’ Insolvency Intelligence, Vol.24 No.2 Pages 27-29 (2011).
- ‘Exclusive Jurisdiction and Arbitration Agreements: Will they be enforced in Bermuda in the event of an insolvency?’ International Corporate Rescue, Vol. 8, Issue 3 (2011)
- ‘International insolvency co-operation in Bermuda: an update’, Corporate Rescue and Insolvency, Vol 4.1 Pages 14-15 (February 2011).
- Bermuda Chapter, co-authored with Narinder Hargun, in Enforcement of Money Judgments, Juris Law Publishing (2011).
- ‘E-disclosure offshore’, in Litigation & Dispute Resolution 2010, Financier Worldwide Ebook, Financier Worldwide (2010).
- Case commentary on Kingate Global Fund Ltd v Knightsbridge (USD) Fund Ltd in ‘International Trust and Estate Law Reports’, 12 ITEL 850 (2010).
- Bermuda Chapter, co-authored with Narinder Hargun, in International Commercial Dispute Resolution (Tottel, 2009), ed Jonathan Warne.
- Bermuda Chapter on ‘Enforcement of Foreign Judgments’ in Judicial Cooperation in Civil & Commercial Litigation in the British Offshore World (Wildy’s, 2009) ed Ian Kawaley, Andrew Bolton and Robin Mayor.
- Bermuda Chapter on ‘Intermediaries, Investment Managers, and Hedge Funds’, co-authored with Anthony Whaley and Paul Smith in Legal Aspects of the Financial Crisis (Globe Law & Business, 2009), ed Eugenio A Bruno.
- ‘The Hedge Fund Redemption’, AIQ Alternative Intelligent Quotient, Issue No. 31 (2009).
- ‘Improving the System: Commercial and Trust Litigation and the Commercial Court in Bermuda’, STEP Journal (July/August 2009).
- ‘Can a Hedge Fund Make Redemption Payments “In Kind” by way of the Issue of “Participation Interests” in its own Illiquid Assets, and What is the Status of a Redeeming Investor who has not Received any Payment at All?’ Hedge Fund Law Report, Volume 2, No. 13 (2009).
- ‘Specific Performance of IT Contracts’, co-authored with Duncan McCall QC, Journal of the Society for Computers and Law (SCL) (13 December 2006).